

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JANICE M. ROTRAMEL (WALLACE)

Claimant

VS.

BRITE VOICE SYSTEMS, INC.

Respondent

AND

**THE ST. PAUL FIRE AND MARINE
INSURANCE COMPANY**

Insurance Carrier

)
)
)
)
)
)
)
)
)
)
)

Docket No. 179,341

ORDER

On June 13, 1997, the applications of both claimant and respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark, dated January 13, 1997, came on for oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through her attorney, Michael V. Madden of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the award of the Administrative Law Judge are, herein, adopted by the Appeals Board.

ISSUES

- (1) Nature and extent of claimant's injury and/or disability.
- (2) Whether the Administrative Law Judge erred in disregarding the medical opinion of Pedro A. Murati, M.D.
- (3) Whether claimant suffered accidental injury arising out of and in the course of her employment with respondent.
- (4) Whether K.S.A. 44-501(c) applies to limit claimant to medical treatment only.

At oral argument, the parties agreed that the issue dealing with K.S.A. 44-501(c) was before the Administrative Law Judge at the time of the regular hearing, although no decision was rendered regarding this issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant began working with respondent as an administrative assistant to the vice president, preparing reports, performing computer work, and general secretarial duties in approximately November, 1992. She continued in this capacity until her lay off on August 11, 1993. Shortly after beginning work for respondent, claimant began experiencing pain and weakness in her wrists. She sought treatment in January, 1993, from Ted Snodgrass, M.D., her family physician, and was referred for treatment to Duane Murphy, M.D., in March, 1993. She was diagnosed with carpal tunnel syndrome and underwent conservative treatment. Claimant's work with respondent continued uninterrupted through August 11, 1993, when she was laid off as a result of a general lay off.

Claimant acknowledges that she experienced preexisting symptomatology while working for Pizza Hut over a several year period before working for respondent. However, claimant contends that her symptoms at Pizza Hut had stabilized. Claimant's employment with Pizza Hut ended March 13, 1992, approximately eight months before her beginning work with respondent.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1992 Supp. 44-501 and K.S.A. 1992 Supp. 44-508(g). Here the credible evidence indicates that claimant did suffer aggravations to her bilateral wrists while employed with respondent. While it is acknowledged that claimant had a preexisting

condition, the evidence indicates that claimant's preexisting condition had stabilized prior to her beginning of employment with respondent. The Appeals Board finds the secretarial and administrative duties assigned to claimant by respondent increased the symptomatology of bilateral carpal tunnel syndrome. Claimant was later diagnosed with lateral epicondylitis in her right elbow and a snapping left thumb, but neither of these conditions are a part of this litigation as they occurred well after claimant's termination of employment with respondent. The Appeals Board finds, based upon the evidence presented, that with regard to the carpal tunnel syndrome, claimant has proven accidental injury arising out of and in the course of her employment.

Claimant began treating with George L. Lucas, M.D., a board-certified orthopedic surgeon, on December 17, 1993. Dr. Lucas felt that claimant had mild carpal tunnel syndrome and continued to treat her conservatively through 1994 and 1995. Dr. Lucas ultimately felt claimant had a permanent impairment of four percent to the right hand from the carpal tunnel syndrome.

On March 4, 1996, the Administrative Law Judge ordered an independent medical examination of claimant with Dr. Pedro A. Murati. Dr. Murati found claimant to have suffered a five percent whole person functional impairment resulting from the overuse syndrome and chronic tendinitis of her bilateral upper extremities. The Administrative Law Judge rejected the opinion of Dr. Murati, finding the opinion of Dr. Lucas to be the more credible medical opinion in this case. The Appeals Board agrees with this finding. Dr. Lucas, as a treating physician, had the opportunity to examine and treat claimant shortly after the symptomatology began. Over a substantial period of time, including 1993, 1994, 1995, Dr. Lucas had the opportunity to evaluate claimant's condition as it relates to her employment and with regard to subsequent, later injuries. Dr. Murati, on the other hand, did not have the opportunity to examine claimant until March 1996, after claimant had been involved in several other employment experiences, and suffered several other injuries. As such, the Appeals Board finds that claimant has suffered a four percent functional impairment to her right hand and wrist.

Respondent further alleges claimant is entitled to medical treatment only and cites K.S.A. 1992 Supp. 44-501(c) as a basis for this contention. The pertinent section of that statute stated:

"(c) Except for liability from medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed."

This language which was the focus of the Court of Appeals in the Boucher v. Peerless Products, Inc., 21 Kan. 977, 911 P.2d 198, rev. denied, 260 Kan. ____ (1996), has been a very active piece of legislation. In Boucher, the Court of Appeals found the language

of the statute to be clear and unambiguous, and held that if a claimant was not disabled for a period of at least one week from earning full wages, he or she would be limited to medical compensation only. Subsequent to the issuance of Boucher, the Kansas Legislature amended K.S.A. 44-501(c), eliminating all reference to the statutory language interpreted in Boucher. The legislature further enacted language in an amended version of K.S.A. 1996 Supp. 44-501(c), rendering the new provisions of K.S.A. 44-501, as amended, applicable to any claim brought under the Kansas Workers Compensation Act for any injury which occurred prior to the effective date of the legislation, unless a claim "has been fully adjudicated in court." The intent of the legislation was to apply K.S.A. 44-501(c) retroactively. In Osborn v. Electric Corporation of Kansas City, ___ Kan. App. 2d ___, 936 P.2d 297 (1997), the appellate court was asked to decide the constitutionality of the retroactive application of this statute. The Court of Appeals, in its April 25, 1997, opinion, found that, while the legislature has every right to alter workers compensation statutes, K.S.A. 1996 Supp. 44-501(c) may be given prospective application only. To allow retroactive legislation in this case would unconstitutionally impair the respondent's due process right to have a substantive law, in effect at the time of injury, applied to the case.

The parties in the instant case agreed that Osborn would apply to this litigation. However, the claimant in Osborn filed a petition for review before the Supreme Court of the state of Kansas and no decision had been rendered at the time of oral argument. Therefore, the parties agreed this matter should be stayed until such time as the Supreme Court rendered a decision on the Osborn petition. On July 10, 1997, the Supreme Court notified the parties in Osborn that the claimant/appellee's Petition for Review had been denied. As such, the Court of Appeals decision in Osborn became law.

The new legislation created by the legislature in 1996 cannot be retroactively applied, and the language of K.S.A. 44-501(c), restricting a claimant's right to compensation to that of medical compensation only unless the claimant is disabled for a period of at least one week from earning full wages, is the law in this case.

The uncontradicted evidence in this case is that claimant missed no work while employed with respondent, and, thus, was not disabled for a period of at least one week from earning full wages at the work at which the employee was employed. Therefore, respondent is relieved of any liability under the Workers Compensation Act with respect to these injuries "except for liability for medical compensation."

The additional issue dealing with whether claimant is entitled to compensation for a scheduled injury or a whole body disability was appealed to the Appeals Board. However, the above finding renders this issue moot, although the Appeals Board acknowledges this issue is, in some fashion, decided by the above finding that Dr. Lucas was the more credible health care provider.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated January 13, 1997, should be, and is, hereby, modified and the claimant, Janice M. Rotramel (Wallace), is granted an award against respondent for a series of injuries through January 1993, with claimant being entitled to all outstanding medical compensation both authorized and unauthorized from the award of the Administrative Law Judge, but denied any additional award in this matter.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are, hereby, assessed against respondent to be paid as follows:

Schaefer Court Reporting	
Deposition of Jan M. Wallace	\$310.50
Don K. Smith & Associates	
Deposition of Jerry D. Hardin	\$340.50
Deposition of Pedro A. Murati, M.D.	\$286.00
Deposition Services	
Transcript of regular hearing	\$230.00
Court Reporting Service	
Deposition of George L. Lucas, M.D.	\$186.55
Deposition of Karen Terrill	\$235.35

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael V. Madden, Wichita, KS
Douglas C. Hobbs, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director